

OGC Has Reviewed

5 May 1947

MEMORANDUM FOR CHIEF, LEGISLATIVE & LIAISON

Subject: Espionage Act

1. Returned herewith is the draft bill for tightening the Espionage Act and the accompanying memorandum commenting on the recommendations of the Interdepartmental Intelligence Committee.

2. It is believed that the changes in 50 U.S.C. 31 and 34 are a useful clarification of those sections, but as a practical matter do not aid greatly in coping with the peculiar security problems faced by this agency. The remaining revisions of the proposed bill are not of too great practical importance with the possible exception of Section 5, and the query arises there whether the blanket provision for disclosure of wire or radio communications would not be in contravention of the Madrid and Cairo International Communications Conference. The bill proposed by the Navy for the protection of cryptographic security is not, we believe, of any great practical importance to this office.

3. From time to time this office has studied the application to our problems of the British Official Secrets Act, but it is not proposed to discuss such an act in detail here for two reasons. One, we feel there is no chance at the present time for the introduction or passage of such a bill, and two, we have recently come across information indicating that in exactly the type of situation for which we would propose such a stringent bill, British Intelligence has found the Official Secrets Act quite ineffective.

4. We wish to make one comment on the memorandum accompanying the bill here proposed. This memorandum, unidentified as to source, rejects recommendation 3 of the Interdepartmental Intelligence Committee, which suggested provision for the death penalty in peace time. This rejection is based on two arguments of the greatest naivete. One, that during peace time there is no obvious threat to national security, and two, that it would make the peace time spy so cautious as to make his apprehension more

Chief, L&L

-2-

5 May 1947

difficult. We are unable to accept these arguments as adequate reason to reject inclusion of the death penalty, and feel that the death penalty should either be permissive with the jury or that degrees of the crime be established; i.e., death where intent to aid a foreign nation is proved, but fine and imprisonment in the case of willful disclosure to an unauthorized person without such intent.

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